IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 171 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

FABRIQUIP PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 171 of 1988
MR BB NAIK for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 05/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following question of law is referred for the opinion of this Court:-

"Whether on the facts and in the circumstances of the case, the deletion of Rs.22,340/- being interest on deferred sale consideration was justified?"

2. The assessment year involved is assessment year 1981-82. The relevant previous year is from 1-7-1979 to 30-6-1980. The assessee was wholly owned subsidiary of M/s.Elscope Pvt. Ltd.. On 1-3-1977, the assessee sold its undertaking to M/s.Elscope Pvt. Ltd. under certain conditions mentioned in the agreement entered into between the assessee and M/s.Elscope Pvt. Ltd.. Another group company of Sarabhai Enterprises, namely, M/s. Sarabhai Chemicals Pvt. Ltd. had also sold its undertaking to M/s. Elscope Pvt. Ltd. which was its wholly owned subsidiary, upon identical terms and conditions as were obtained in the case of the assessee and M/s.Elscope Pvt. Ltd.. In the assessment framed under section 143(3) of the Income-tax Act, 1961, the ITO brought to tax an amount of Rs.22,340/- being interest on deferred sale consideration. Being aggrieved by the said order, the assessee preferred appeal before CIT (Appeals) who after following his earlier appellate order for assessment year 1980-81, upheld the action of the ITO in this regard.

3. The assessee has taken up this point before the Tribunal and the Tribunal has also followed the order passed in the case of Sarabhai Chemicals Pvt. Ltd. for the assessment year 1981-82 and for assessment years 1979-80 and 1980-81 and deleted the addition of Rs.22,340/- from the total income of the assessee.

In the aforesaid facts and circumstances of the case, the Revenue preferred the above question of law to this Court for its opinion.

4. At the time of hearing of this Reference, our attention is drawn to the decision of this Court in the case of Sarabhai Chemicals Pvt. Ltd. vs. Commissioner of Income-tax reported in (2002) 173 CTR (GUJ) 193. This decision was rendered in the reference arising out of the appeal in the case of Sarabhai Chemicals Pvt. Ltd. for assessment years 1979-80 and 1980-81. As far as the assessment year 1981-82 is concerned, the reference preferred by the revenue in the case of Sarabhai Chemicals Pvt. Ltd., this Court has allowed the

reference of the revenue on the ground that as per the resolution dated 30-6-1978, the interest was chargeable w.e.f. 1-7-1979 which covers the period so far as the assessment year 1981-82 is concerned and on the basis of that fact, this Court has taken the view in favour of the revenue and against the assessee.

5. Here, in the present case before us also, the resolution was passed on 6-2-1979 and as per the said resolution, the interest was to be charged from 1-7-1979. The assessment year involved in the present reference is assessment year 1981-82 which covers the aforesaid period. In view of these facts and following the earlier order of this Court in the case of Sarabhai Chemicals Pvt. Ltd. for assessment year 1981-82, we are of the view that the Tribunal has committed an error in deleting the amount of Rs.22,340/- being interest on deferred sale consideration.

We, therefore, answer the question referred to us in the negative i.e. in favour of the revenue and against the assessee.

6. The Reference is disposed of accordingly with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-